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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,173	03/23/2004	Warren P. Steckle JR.	S-102,304	4826
35068	7590	09/12/2006	EXAMINER	
LOS ALAMOS NATIONAL SECURITY, LLC LOS ALAMOS NATIONAL LABORATORY PPO. BOX 1663, LC/IP, MS A187 LOS ALAMOS, NM 87545			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,173

Applicant(s)

STECKLE ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>23 March 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9, drawn to an apparatus comprising two syringes connected through a tube, classified in class 366, subclass 176.3.
 - II. Claims 10-13, drawn to a method for determining rheological parameters of a fluid, classified in class 73, subclass 54.01.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus could be used to mix two materials, without determining any rheological parameter.
3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required

because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

5. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Robert Santandrea on 08 September 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al. (US 2002/0101785). Regarding claim 1, Edwards ('785) discloses an apparatus comprising a syringe assembly comprising a first syringe (12), a second syringe (14), and a capillary tube (54); said first and second syringes in fluid communication through said capillary tube, a movable assembly (18), said syringe assembly secured within said movable assembly, and a platform assembly (16) connected to constrain said movable assembly to one axis of motion. Regarding claim 4, Edwards ('785) discloses an apparatus comprising a first syringe (12) having a first barrel (48) and a first plunger (44), a second syringe (14) having a second barrel (48) and a second plunger (44), a tube (54) connecting said first barrel with said second barrel, a movable assembly (18), said first barrel and said second barrel removably fixed within said movable assembly, and a platform assembly (16) connected to constrain movement of said movable assembly to one axis of motion, connect to said first plunger and constraining said second plunger to restrain said first plunger and said second plunger for movement within said first barrel and second barrel respectively, as said first barrel and said second barrel move with said movable assembly along said one axis of motion. Regarding claim 5, said movable assembly comprises a holder tube defining a first slot (32) for removably confining said first barrel and a second slot (52) for removably confining said second barrel. Regarding claim 6, said movably assembly further comprises a spacer (50) for contacting said for contacting said first barrel with said first slot and a securing assembly for urging said spacer said first barrel (See Fig.

5). Regarding claim 7, said platform assembly further includes a lower retainer coupling (22) receiving said second plunger to prevent movement of said second plunger as said movably assembly moves along said one axis of motion.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 3, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. (US 2002/01011785) in view of Todd et al. (US 3,035,820). The apparatus of Edwards ('785) was discussed above. Edwards does not disclose the claimed nut, screws, adjustment means and vee blocks. Todd et al. ('820) teaches an apparatus very similar to the apparatus of the instant invention and to Edwards ('785), also having two syringes having barrels (20) and pistons (29), the syringes communicating through capillary tube (36). Structure is provided for moving the barrels relative to the plungers, however, it is intended that the barrels be fix and the plungers move. In any case, Todd ('820) teaches nuts 24 and spaces 22 to secure the syringes. Screws and adjust means are also taught by Todd ('820) (see col. 2, line 55 to col. 3 line 24). Axially spaced blocks (13) for constraining movement to one dimension are also taught. It would have been obvious to one of ordinary skill in the art to have employed the claimed nut, screws, adjustment means and blocks of Todd ('820) in the

device of Edwards ('820) because Todd ('820) explains that securing and adjustability advantages these provide in col. 2, line 55 to col. 3 line 24.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read 'D. L. Sorkin', written in a cursive style.

David L. Sorkin
Primary Examiner
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DLS